IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, CIVIL JURISDICTION

LETTERS PATENT APPEAL NO.183 OF 1995
IN
WRIT PETITION NO.910 of 1994

The Nationa,l Textile Corporation)
(S.N.) Ltd., Rambhau Bhogale Marg,)
Ghodapdeo, Bombay-400 023.)
Unit: New Hind Textile Mills.)..APPELLANT

Versus

Shri Gangaram Atmaram Vishwasrao)
207-B, Mahesh Bhuvan, Room No.8,)
Lalbaug, Bombay-400 012.)..RESPONDENT

Mr. Kiran S. Bapat, for the Appellant.
Dr. R.S. Kulkarni, Senior Advocate with Mr. Abhay Kulkarni and Mr. L.M. Acharya, for the Respondent.

CORAM: F.I. REBELLO & ANOOP V.MOHTA, JJ.
DATE : 1st September, 2004

ORAL JUDGMENT (PER F.I. REBELLO, J.)

1. This is an appeal against the judgment dated July 31, 1995 of the learned single Judge which allowed the petition filed by the respondent workman and held that the respondent workman was entitled to reinstatement as a permanent employee. The order of the Industrial Court dated 22nd October, 1993 dismissing the complaint, therefore, was set aside.

2. At the hearing of this Appeal on behalf of the appellant learned Counsel contends that there is a settlement existing between the recognised union and the respondent. That settlement provides for the number of permanent workers to be engaged in a particular department. Once a settlement was existing merely because thereafter additional Model Standing Orders were

notified would be of no consequence. In this case more specifically Model Standing Order 4-C reads as under:-

> "A badli or temporary operative which had put in 240 days uninterrupted service in the aggregate in any other undertaking during the period of preceding twelve calender months shall be made permanent in that undertaking by no order in writing signed by the Manager of any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the undertaking throughout the period of the said twelve calender months.
>
> "Explanation- For the purpose of this clause any period of interrupted service, caused by cessation of work which is not due to any fault of the operative concerned, shall not be counted for the purpose of computing 190 days or 240 days or, as the case may be, for making a badli or temporary operative permanent."

The learned Counsel points out that the learned Single Judge proceeded to allow the petition relying on the said Model Standing Orders. Attention is invited of the Court to an earlier judgment in the case of Luddur Algoo Yadav v. The General Manager, India United Mills & Ors., 196 I CLR 1044 wherein the learned Judge relying upon the settlement had taken a view that a workman could not be made regular contrary the settlement. It is pointed out

that it is no doubt true that there are several judgments of learned Single Judges who have taken the view taken in the judgment under Appeal. In the matter of Rashtriya Mill Mazdoor Sangh vs. S.L. Mehendale, Member, Industrial Court, Bombay & Anr., 2000 I CLR 542 the learned Single Judge relied on the judgment passed in Writ Petition No.1358 of 1997 as also the judgment of another learned single Judge in New Hind Textile Mills Unit of N.T.C. (SM) Ltd. v. Rashtriya Mill Mazdoor Sangh, 2003 III CLR 332.

3. On the other hand on behalf of the respondents learned Counsel points out the judgment of the Apex Court in Western India Match Company Ltd. v. Workmen 1973 II L.L.J.403 wherein in paragraph 8 the Apex Court has observed as under:-

> "8. If a prior agreement inconsistent with the standing orders will not survive, an agreement posterior to and inconsistent with the standing order should also not prevail. Again, as the employer cannot enforce two sets of standing orders governing the classification of workmen, it is also not open to him to enforce simultaneously the standing orders regulating the classification of workmen and a special agreement between him and an individual workman settling his categorisation."

4. In our opinion considering the facts on record it is not necessary for us to decide the point urged on

behalf of the Appellants. We find that in paragraph 19 the learned single Judge was pleased to grant relief based on the earlier order dated 30th January, 1987 passed in Appeal (IC) No.60 of 1986 wherein the termination of the workman was set aside and he was directed to be reinstated. In that appeal the contention raised on behalf of the appellants here, that the respondent workman was temporary was rejected being without basis and thereafter directed reinstatement with full back wages. Once that order was passed on the finding recorded that the petitioner had completed more than 240 days of service and his appointment was not temporary that issue stood concluded and in fact ought not to have been the subject matter of an issue in the subsequent complaint.

5. It was also contended on behalf of the appellant that no notice of change as required under Section 42(1) was served and as such the strength of the permanent workmen would not have been increased. In view of the order to be passed we do not propose to answer that issue. Even otherwise prima facie the Model Standing Orders have been amended and by virtue of Model Standing Order No.4-C it is provided as to when the temporary/badli workman can be made permanent.

6. Considering the above, we are of the opinion that there is no merit in this Appeal, which is accordingly dismissed.

It is made clear that if the respondent's dues have not

been fully paid it will be open to the respondent to take necessary steps which in law he is entitled to.

Certified copy expedited.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J.)